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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

AUG 14 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 9)
of the Communications Act) MD Docket No. 96-186
)
Assessment and Collection of)
Regulatory Fees for)
Fiscal Year 1997)

COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")¹ submits its comments on the Further Notice of Proposed Rule Making in the above-captioned proceeding.² Specifically, CTIA opposes the Commission's proposal to make publicly available the amount of the regulatory fees paid and the corresponding volume or units upon which the fee payments are based. This requirement is unnecessary and reveals sensitive and confidential business information.

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular, broadband PCS, enhanced specialized mobile radio, and mobile satellite providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² See Implementation of Section 9 of the Communications Act; Assessment and Collection of Regulatory Fees for Fiscal Year 1997, Further Notice of Proposed Rule Making, MD Docket No. 96-186, FCC 97-254 (July 18, 1997).

**I. Publication of Regulatory Fees Based on Subscriber Data
Impermissibly Reveals Commercially Sensitive Data**

In its Further Notice, the Commission proposes to require CMRS licensees to maintain and make available to the Commission within 30 days, upon request by the Managing Director, documentation concerning the basis for their fee payments, *i.e.*, documentation on the number of pagers, cellular telephones or PCS units.³ Moreover, the Commission proposes to publish annually in the Federal Register lists of the entities that have paid a regulatory fee for the preceding fiscal year, including the amount of the fee paid and the volume or units upon which the fee payments were based.⁴

Publication of the fee and the number of units upon which fee payments are based would reveal sensitive business information and disrupt a competitive marketplace. In a competitive industry that defines its markets by number of subscribers, revealing the subscriber count within a defined market allows competitors to gauge the effect of their marketing efforts. It can dampen competition, for example, by preventing a carrier from realizing the full benefits of an innovation by reducing the time prior to which competitors recognize its success and emulate it. Wireless carriers guard their market-specific subscriber counts as confidential financial data and generally do not report such

³ Further Notice at ¶ 2.

⁴ Id. at ¶ 6.

information on a disaggregated basis, unless they have adequate assurances that such information will be safeguarded from public disclosure.

Reporting subscriber data even on an aggregated basis could disproportionately harm new entrants, thus thwarting the growth of a key new industry sector. For example, it would be very difficult to deduce market specific information from aggregate subscriber data for an incumbent cellular carrier with markets throughout the nation. In contrast, a new entrant that has deployed systems in only one or two markets will be at a competitive disadvantage because its competitors will know to a much greater level of detail (and, if only a single market is involved, will know exactly) the market specific information. This outcome is inconsistent with well established Commission policies and objectives.⁵

Moreover, the Commission need not risk such disruption of the competitive marketplace, as public disclosure of such sensitive information is unnecessary. The single reason the Commission poses for requiring publication of the fees and units upon which the fees are based is that "[t]his will enable fee payers to verify that their payments have been

⁵ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Second Report, FCC 97-75, at 1 (Mar. 25, 1997) (noting the Commission's goal of promoting competitive market conditions and enhancing competition among CMRS providers).

properly recorded."⁶ The Commission, however, has already established a formal verification process by which licensees may receive an official record of the payment and, if necessary, may subsequently correct an erroneous payment.⁷ This process should provide an adequate means for verifying any information.

The highly sensitive nature of this data requires that the Commission exempt wireless carriers from publishing the units upon which fee payments are based. Although Section 0.459 of the Commission's rules allows parties to request confidential treatment on a case-by-case basis, this process does not provide consistent and adequate safeguards from public disclosure of such data, given the highly competitive environment of the wireless industry.

⁶ Further Notice at ¶ 6.

⁷ See 47 C.F.R. § 1.1159(d), 1.1160, 1.1167.

CONCLUSION

For the foregoing reasons, the Commission should not require CMRS licensees to provide and publish the subscriber specific data upon which regulatory fees are based. Disclosure of such information would harm new entrants and thwart competition.

Respectfully submitted,



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